JD–79–03
East Chicago, IN

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

LAFARGE NORTH AMERICA, INCORPORATED

and

Cases 13–CA–39980
13–CA–40178

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL–CIO, CLC

and

UNITED STEELWORKERS OF AMERICA, LOCAL 1010, AFL–CIO, CLC

Jessica Willis Muth and *Brigid Barnicle, Esqs.,*
for the General Counsel.
Beverly P. Alfon, Esq. (Baum, Sigman, Auerbach, Neuman & Katsaros, Ltd.), of Chicago, Illinois, and *Dale D. Pierson, Esq.*, *General Counsel* (I.U.O.E., Local 150, AFL–CIO), of Countryside, Illinois, for the Charging Party.
J. Anthony Messina, Robert S. Hawkins, and Christopher J. Rusek, Esqs. (Klott, Rooney, Leiber & Schorling, P.C.), of Philadelphia, Pennsylvania, for the Respondent.

DECISION

Statement of the Case

EARL E. SHAMWELL JR., Administrative Law Judge. This case was heard before me on October 9, November 19, 20, 21, and 22, 2002, in Chicago, Illinois, pursuant to an original charge filed in Case 13–CA–39980 on February 8, 2002, by the International Union of Operating Engineers, Local 150, AFL–CIO, CLC (Local 150) against LaFarge North America, Inc. (the Respondent); on March 22, 2002, Local 150 filed its first amended charge in 13–CA–39980 and its second amended charge in that case on June 10, 2002, against the Respondent. On August 2, 2002, the Union filed its third amended charge in 13–CA–39980.

On May 8, 2002, the Local 150 filed an original charge against the Respondent in Case 13–CA–40178 and an amended charge on June 10, 2002.

On July 31, 2002, the Regional Director for Region 13 of the National Labor Relations Board (the Board) issued a complaint in Case 13–40178 against the Respondent alleging that it violated Section 8(a)(1) and (2) of the National Labor Relations Act (the Act). On August 6, 2002, the Regional Director issued a complaint consolidating Cases 13–CA–39980 and 13–CA–40178. The consolidated complaint alleged violations of Section 8(a)(1), (2), and (3) of the Act. On August 19, 2002, the Respondent timely filed its answer to the consolidated complaint

admitting some of the allegations contained therein, but essentially denying the commission of any unfair labor practice; the Respondent also asserted affirmatively that the allegations of the complaint were time-barred in whole or in part by Section 10 (b) of the Act.[1]

At the hearing, the parties[2] were represented by counsel and were afforded full opportunity to be heard, examine and cross-examine witnesses, and introduce evidence. On the entire record, including my observation of the demeanor of witnesses, and after considering the briefs filed by the General Counsel, the Charging Party, and the Respondent, I make the following.

I. Jurisdiction—The Business of the Respondent

The Respondent, a Maryland corporation with an office and place of business in East Chicago, Indiana, has been engaged in the operation of a slag granulation facility. The Respondent admits that during the past calendar year in conducting its business operations, it has purchased and received goods, products, and materials valued in excess of $50,000 at its East Chicago, Indiana facility directly from points located outside the State of Indiana. Accordingly, I would find and conclude that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.[3]

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[1] The Respondent argues that the allegations in the complaint, in whole or in part, are time-barred by Sec. 10(b) of the Act. The Respondent specifically contends that any allegedly unlawful comments made by an admitted supervisor (par. V(a) and (b) to prospective job applicants in November and December 2001 were not formally charged by the Union until August 2, 2002, more than 6 months after the offending comments were made.

I note that in its first amended charge filed on March 22, 2002—a date well within the 6-month period—the Union alleged, inter alia, that since August 31, 2001, the Respondent interfered with its employees' choice (of Local 150) as their exclusive bargaining representative in violation of Sec. 8(a)(1) and (2) of the Act. Clearly, the March 22 amended charge encompassed and related to the allegations of November and December 2001, as well as subsequent charges. Contrary to the Respondent, the November and December 2001 allegations, in my view, do not expand the charges in contravention of the 6 months limitation period. Rather, they were clearly appropriately and timely brought within the 10(b) period; further, the Respondent was on notice of these charges in a legally sufficient way. I would find and conclude that dismissal of the charges on grounds of Sec. 10(b) is not warranted and would deny the Respondent's request for dismissal. The balance of the charges in this matter is not asserted by the Respondent to be time-barred.

[2] The United Steelworkers of America, Local 1010, AFL–CLO, CLC, listed as a party-in-interest in this matter, did not formally appear at the hearing and was not represented there by a representative of its choosing. I note that in a prehearing conference call I ordered Local 1010's attorney to appear at the hearing on October 9. However, on October 9, Local 1010's attorney, David Gore, who indicated to me off the record that he would not be making a formal appearance on behalf of Local 1010 on instructions of the local. (Tr. 19.)

[3] There appears to be no dispute that the Respondent is not a construction industry employer within the meaning of Sec. 8(e) and (f) of the Act. I would find and conclude that based on the evidence of record, the Respondent is not an employer in the construction industry.

II. The Labor Organization

It is admitted by the parties that the International Union of Operating Engineers, Local 150, AFL–CIO, CLC (Local 150) and United Steelworkers of America, Local 1010, AFL–CIO, CLC (Local 1010) are labor organizations within the meaning of Section 2(5) of the Act.

III. The Appropriate Unit

The parties admit, and I find and conclude, that the following of the Respondent's employees reflected an appropriate unit within the meaning of the Act:

> All full time and regular part time production and maintenance employees located at the Respondent's East Chicago, Indiana facility; excluding all office clericals, guards, technical employees and professional employees and supervisors as defined in the Act.

IV. The Unfair Labor Practices

A. Background[4]

This litigation begins at a steel making plant or mill owned and operated by a company, Ispat Inland, Inc., located in East Chicago, Indiana.[5] This plant, called the Indiana Harbor Works, is comprised of a collection of steel making facilities where raw materials—iron ore—is melted in blast furnaces to a molten state to produce molten iron, which is ultimately converted into steel. This steel is then formed into billets or slabs, sent on to the finishing departments of the facility, and converted into steel product—bars, coils, flat rolled sheets—numbering in the thousands of tons annually—and then sold to various domestic manufacturing industries.

Ispat employs around 1200-1300 salaried employees and approximately 5600 unionized employees. Historically, since around 1979 but certainly since 1991, the vast majority of the unionized employees are represented by Local 1010 of the Steel Workers; only around 100 were represented by the Bricklayers Union. Local 1010's staff and bargaining unit representative at Ispat was Mike Mezo, who also was a signatory to the latest collective-bargaining agreement between Ispat and Local 1010.

Local 1010 and Ispat entered into its current collective-bargaining agreement on August 1, 1999, with a termination date of July 31, 2004.[6] The current contract may be described as a pattern type or basic labor agreement associated with the steel industry. One of the material aspects of this collective bargaining relates to contracting out or outsourcing bargaining unit work which (in Art. 2, Sec. 3), aside from enumerated exceptions, basically prohibits contracting out any work capable of being performed by bargaining unit employees. The type of work subject to these provisions covers inside and outside construction work done on the plant premises.

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[4] In this section, I have determined certain matters as fact either because of their undisputed nature or because I have credited pertinent testimony and other evidence of record and drawn reasonable inferences therefrom. To the extent the findings in this section are inconsistent with any other evidence, I have not credited any such inconsistent evidence.

[5] Ispat is not a party to this litigation.

[6] See R. Exh. 1, the collective-bargaining agreement dated August 1, 1999, between Ispat and Local 1010.

One of the largest of its kind at the Indiana Harbor Works steel making complex was Blast Furnace No. 7, where members of Local 1010 were employed in various capacities.[7] As noted, the steel making process starts at the blast furnace where raw ore is smelted. A byproduct of the smelting process in steel making is slag, a waste product that is discharged from the furnace at an extremely high temperature—over 1200 degrees Fahrenheit. Slag, while technically waste, can be processed and used as aggregates, construction materials, and landfill.

Historically, Local 1010 members removed slag from Blast Furnace No. 7 by skimming it from the surface of the molten material and then depositing in an outside pit area. The workers then spray this very hot material with water and, once moderately cool, collect the slag with special front loaders which then load the material onto trucks for transport to a storage facility.[8] Since Local 1010 members had been performing this slag removal work since at least 1978, if not longer, the current collective-bargaining agreement, as understood and interpreted by the parties, did not permit the contracting out of the slag removal function; in short, Local 1010 "owned" this work.

Around the summer of 1999, the Respondent, a leading domestic supplier of construction materials utilizing slag, became interested in building a slag processing plant at Ispat's Indiana Harbor Works facility using a new and reportedly safer and more efficient process.[9] Towards that end, representatives of LaFarge, met with principals of Ispat and Local 1010 around December 20, 1999, to negotiate and resolve certain labor related issues associated with the construction, operation, and manning of the proposed slag plant.[10] The major hurdle to the construction of the slag plant was Local 1010's claim, pursuant to the collective-bargaining agreement, that its members had traditionally removed the slag; hence, this was bargaining unit work. Ispat agreed with Local 1010's position. Accordingly, the December 20 meeting was scheduled to persuade Local 1010 (and Ispat) to waive the subcontracting provisions of the agreement, and allow LaFarge to construct the plant and remove the slag.

At this meeting, Local 1010 representatives discussed its work ownership issues, mainly that the new plant, as operated by the Respondent would cost the local around 10 jobs. At the meeting's end, Local 1010 was not disposed to waive the subcontracting provisions of the contract. Another matter of concern for the Respondent at this time was Local 1010's (and Ispat's) position that the Steel Workers' large craft groups performed construction work,

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[7] This litigation involves only Blast Furnace No. 7.

[8] This particular slag removal process is called open air, and approximately 12 Local 1010 members with contract seniority rights were assigned to the slag removal operation.

[9] The LaFarge process differs from the old air-cooled process in that as slag comes out of the blast furnace, it runs through a runner system and falls over a blowing box where the slag becomes crystallized or granulated. This granulated slag is then taken to a dewatering drum, where water is removed, and conveyed to a drying pad. The resulting slag pellets are used in the cement industry and have more commercial value than air-cooled slag. The LaFarge process reportedly was safer for employees—this slag is not quite as hot—and produced environmental benefits as well.

[10] The Respondent was represented by J. Anthony Messina, Esquire. Ispat was represented by Patrick Parker and Robert Cayia, managers in its union relations department. Local 1010 was represented by Tom Hargrove, Dennis Shaddick, Harold Golden, and the aforementioned Michael Mezo. Only Messina and Cayia testified at the hearing.

including buildings and facilities at Ispat. The Respondent, however, would be constructing the new slag plant. Hence, Local 1010's issues extended not only to the operational end—removing slag—but also to the construction phase of the new facility. The December meeting ended with no agreement between them. However, Local 1010 agreed to give the matter further consideration, suggesting that Ispat grant the local unspecified concessions or incentives to give up its contract rights.

The Respondent (Messina) again met with Local 1010 (Mezo) to discuss the proposed construction on January 7, 2000. Again, Local 1010 expressed its concerns about the loss of member jobs and asked questions regarding construction, operation, and maintenance of the facility, the movement of the slag, and particularly its movement within the plant. For its part, the Respondent expressed its concerns about the Steel Workers' pattern contract, contending mainly that it was not appropriate for the proposed slag operation because striking workers at the slag plant could cause the whole plant operation to be shut down (i.e., no furnace in operation, no steel can be produced). Shortly after the meeting, the Respondent sent Local 1010, at its request, a copy of a collective-bargaining agreement for one of its Canadian slag plants.

On about January 18, 2000, the Respondent, through Messina, sent Mezo a copy of the Company's initial contract proposal.[11] On about January 21, 2000, the Respondent again met with Local 1010[12] and on this occasion the parties engaged in extensive and serious discussion about the substantial provisions of the proposed collective-bargaining agreement, including benefits, overtime, supervisors working, no strike contract, reopening provisions, operation ("driver") of equipment, and possible interference with the Ispat facility.

On February 9, 2000, the Respondent sent Local 1010 a letter[13] purporting to outline and resolve all outstanding issues with exception of the employer contributions to health and welfare and a final resolution to the driver issue.

On March 7, 2000, the Respondent (Messina) sent Local 1010 (Mezo) another letter[14] purporting to deal with previous discussions between the Respondent and Local 1010 regarding

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[11] See R. Exh. 6. It is noteworthy that the cover letter from Messina states, inter alia: "The Company [LaFarge] will state to the employees [should Local 1010 and LaFarge reach full agreement] that the Company favors union representation of its employees with the Steelworkers. The Company will recognize the Union based on a card check. The attached agreement represents the agreement acceptable to the Steelworkers and you will recommend ratification to the LaFarge employees." However, this cover letter was not incorporated by reference into the proposed agreement or any subsequent agreements between Local 1010 and the Respondent.

[12] By this time, Ispat had for all practical purposes bowed out of the matter, having stated its agreement with Local 1010 about work ownership. Ispat left that matter for resolution by the Respondent and Local 1010.

[13] See R. Exh. 7. Included with the letter were a construction letter/plans for the Blast Furnace No. 7 granulation facility, a project schedule and passages from the proposed collective-bargaining agreement dealing with leave of absence, substance abuse, group insurance and other benefits, bereavement leave and jury duty, hours of work and overtime, and reporting pay.

[14] This letter is contained in R. Exh. 8. Notably, the exhibit does not include an attachment referred to in the body of the letter. It is also noteworthy that in this letter the Respondent states, "Your cooperation and understanding of the construction phase and LaFarge's

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supervisors working and contract reopening issues, as well as a future proposed contract provision relating to health and welfare employee contributions. On March 14, 2000, the Respondent (Messina) submitted to Local 1010 (Mezo) an undated copy of a proposed collective-bargaining agreement between the Respondent and Local 1010 for Local 1010's approval and signature.[15] Sometime after March 14, Local 1010 signed the collective-bargaining agreement which, in addition to having no specific execution date, also did not have an effective bargaining date or a specific termination date.[16]

The Respondent had not yet begun hiring any employees for the new slag granulation plant at this time.

In early 2001, construction of the Respondent's slag granulation plant commenced. In June 2001, the Respondent hired Steven Marcus as plant manager for the new facility. Marcus' duties included hiring employees for the slag plant. In August of 2001, the Respondent advertised in local newspapers for the availability of production and mobile equipment operators at the new granulation plant described as the East Chicago, Indiana slag plant.[17] The Respondent also solicited resumes from various other sources, including union walk-ons and the Indiana Department of Employment Work Force, but no special consideration was given to any union or its members.[18] By mid-November to late November 2001, the Respondent began in earnest the hiring of production equipment operators, maintenance positions, and production and mobile equipment operators at the new slag facility, ultimately hiring an initial 14 employees between December 2001 and February 2002.[19]

Around the middle of December 2001, Local 1010 representatives met with a number of newly hired LaFarge slag facility workers at its union hall where the union representatives asked these workers to sign a Local 1010 authorization (to represent) card.[20] Around 9 to 12 of the

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manufacturing operation provided us with the opportunity to reach an agreement which the parties have agreed will be put into effect once the Union achieves majority status." This letter is not incorporated by reference into any contract proposal.

[15] See R. Exh. 9, a cover letter and collective-bargaining agreement. The contract included appendices covering a wage schedule, a summary of 401(k) plan policy, a summary of group insurance, supervisors working, and negotiation reopener, and employee contribution offset. This agreement was signed by Messina but is undated.

[16] This contract is contained R. Exh. 10.

[17] See R. Exh. 23, a copy of an ad announcing hiring opportunities at the LaFarge slag plant and directing that resumes be submitted no later than August 31, 2001.

[18] Notably, on this point, Mezo called Messina and complained that LaFarge and Local 1010 had a "deal" that would give a hiring preference to the Steel workers and that LaFarge had not kept its side of the bargain. (Tr. 506-507.) Messina testified that after investigating this complaint and determining that the plant manager had given no preference to Steelworkers, he told Mezo that he would provide the names of the new hires so that if he (Mezo) were successful in organizing the plant, it would solve the problem of LaFarge's not honoring its preferential commitment.

[19] See R. Exhs. 24-29, various documents prepared and used by plant manager Steve Marcus in the hiring process at LaFarge's East Chicago slag plant.

[20] The Local 1010 officials who conducted this meeting shortly before Christmas were Don Jones and a representative of the International Steel Workers, Sue Beckman. Neither Jones nor Beckman testified at the hearing. See G. C. Exhs. 5, 9, and 12, copies of Local 1010 authorization cards signed by LaFarge employees, General Counsel witnesses Jimmie Harris, Alex Garcia, and Ricky Wilson who testified, inter alia, about their signing of the cards in

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LaFarge slag workers had signed a Local 1010 authorization card by January 25, 2002, and this fact was communicated to the Respondent (Messina) around the same time.[21]

On January 25, 2002, the Respondent and Local 1010 formally signed, executed, and ratified their collective-bargaining agreement of March 14, 2000.[22]

On about February 6, 2002, by letter, Local 150 Organizer David Fagan advised the Respondent's plant manager, Steve Marcus, that two employees, Jim Utley and Mike Hardin, were engaging in organizational activities at the LaFarge slag facility.

During the period covering February 6 through 12, 2002, 17 of the unit employees at the LaFarge slag facility signed revocation of authorization forms whereby each worker withdrew and revoked any prior authorization of Local 1010 to represent him/her for purposes of collective bargaining.[23] At about the same time, a number of these workers signed authorization of representation cards designating Local 150 as their collective-bargaining representative.[24] On February 6, Local 150 also filed a representation petition with the Board in Case 13–RC–20721, asserting that it be certified as the collective-bargaining representative of the Respondent's employees engaged in slag production at the facility in question.[25]

On February 22, March 6 and 12, 2002, Local 150 (Fagan), by letters[26] of those dates, informed the Respondent that its alleged failure to pay unit employees for one-half hour of work would result in the Union seeking redress under Federal or State law and that any recognition of and any collective-bargaining agreement between the Respondent and Local 1010 was unlawful under the Act.

On about May 6–8, 2002, several of the Respondent's supervisors distributed dues-authorization (checkoff) cards for Local 1010 to hourly employees at the new slag facility pursuant to the union-security and dues-checkoff provisions of the January 25, 2000 collective-

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question. These cards are dated December 18, 19, and 17, respectively. R. Exh. 30 identified all nine of the employees who signed Local 1010 cards.

[21] By letter to Messina dated January 25, 2002, arbitrator Jeanne Vonhos certified that 9 of 14 of the new hourly workers had completed and signed a Local 1010 authorization card. (See R. Exh. 14.) It should be noted that a deacon of a local church, Alvin Purham, certified that a majority of the employees of LaFarge signed Local 1010 authorization cards on December 31, 2001. Notably, Plant Manager Steven Marcus wrote Mezo of Local 1010 on January 17, 2000, that upon certification of the authenticity by the arbitrator, LaFarge agreed to recognize Local 1010 as collective-bargaining representative for the slag workers.

[22] See R. Exh. No. 16, the collective-bargaining agreement, and 17, a memorandum of understanding wherein the Respondent and Local 1010 agree, inter alia, that the effective date of their agreement was January 25, 2002. The January 25, 2002 agreement is virtually identical to the March 20, 2000 agreement, except for an amendment to Appendix A, the wage schedule, wherein certain across-the-board wage increases were implemented in the memorandum of understanding, and in Art. XVII dealing with medical and dental insurance.

[23] See G. C. Exh. 15.

[24] See G. C. Exh. 7, 11, 14, union authorization cards for employees Jimmie Harris, Alex Garcia, and Ricky Wilson, respectively, dated February 6 (Harris and Garcia) and February 7 (Wilson).

[25] See G. C. Exh. 16, the petition.

[26] See R. Exhs. 33, 34, 35, and 36.

bargaining agreement with Local 1010. Unit employees were instructed by the supervisors to turn the checkoff cards in to the Respondent by about May 10, 2002.

B. The Substantive Charges in the Consolidated Complaint

The consolidated complaint (complaint) alleges essentially (but not in this particular order) that the Respondent violated Section 8(a)(1) and (2) of the Act by unlawfully recognizing and rendering assistance and support to Local 1010 by verbally, and later in writing, on March 20, 2000, entering into a collective-bargaining agreement with Local 1010 wherein Local 1010, inter alia, would serve as the exclusive bargaining representative of the Respondent's employees in an appropriate bargaining unit;[27] that the Respondent entered into this agreement notwithstanding that Local 1010 did not represent an uncoerced majority of the employees in the unit. The complaint further alleges that by entering into and executing the collective-bargaining agreement on January 25, 2002 (basically ratifying the March 20, 2000 agreement) with Local 1010, the Respondent violated the Act's prohibitions against unlawful recognition and rendering assistance to a labor organization.

The complaint also alleges a violation of Section 8(a)(2) in that the Respondent's supervisors on certain dates unlawfully rendered assistance and support to Local 1010 by distributing Local 1010 dues-checkoff authorization cards to its employees and instructing them to sign the cards and return them by a certain date, pursuant to the union-security and dues-checkoff provisions of the aforementioned collective-bargaining agreement(s) between Local 1010 and the Respondent.

The Respondent is also charged with unlawfully interfering with its employees' free choice of a collective-bargaining representative by telling them that its East Chicago slag facility was "union"; by threatening its employees with discharge if they did not sign Local 1010 dues-checkoff authorization cards; and by telling its employees on two occasions that the Respondent had already selected the employees' collective-bargaining representative, namely, Local 1010; all in violation of Section 8(a)(1) of the Act.

Finally, the Respondent is charged with violating Section 8(a)(3) of the Act by allegedly entering into, agreeing with, and enforcing Article IX of the January 25, 2002 collective-bargaining agreement dealing with union membership and security and dues-checkoff authorization with Local 1010, notwithstanding that Local 1010 was not the lawfully recognized exclusive bargaining representative of unit employees, to encourage its employees to join or support Local 1010 as opposed to any other labor organization.

As practical matter, the undisputed linchpin of the matter is the prenegotiated March 20, 2000 collective-bargaining agreement. If this agreement is deemed lawful, it can fairly be said that the balance of the charges may well be disposed of per force. If, however, the agreement is unlawful, it would seem at least at first blush that the other charges relating to it would be likewise established. Be that as it may, this previously negotiated contract, in my view, lies at the center of this controversy.

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[27] As noted previously herein, there is no dispute that the Respondent's employees in the following unit are an appropriate bargaining unit under the Act.

> All full time and regular part time production and maintenance employees located at the Respondent's East Chicago, Indiana facility; excluding all office clericals, guards, technical employees and professional employees and supervisors as defined in the Act.

C. Contentions of the Parties Regarding the March 20, 2000 Collective-Bargaining Agreement

The General Counsel, joined by the Charging Party, argues that longstanding and well-established Board law prohibits an employer from recognizing a union that does not have authorization from a majority of its employees to represent them for purposes of collective bargaining; that prohibition extends as well to negotiating a contract with such a union. She also argues that the recognition and contract are nevertheless unlawful even where there is an agreed-upon condition that the union in question must obtain majority support from the employees.

As to the instant case, the General Counsel submits that the Respondent recognized, negotiated with, and ultimately executed a collective-bargaining agreement with Local 1010 in March 2000, about 18 months before the Company commenced operations and before even one employee had been hired at the new slag facility—a clear violation, she contends, of the Act.

The General Counsel argues that while the Respondent and Local 1010 may well have agreed at the time that the contract would become effective only upon the Steel Workers' establishing that they had the authorization and a support of a majority of the Respondent's employees, this does not excise the contract of illegality. By recognizing Local 1010, negotiating, and entering into the agreement in March 2000, long before Local 1010 had approached any employees, the General Counsel submits the Respondent engaged in illegal top down organizing and draped Local 1010 with a "deceptive cloak of authority" in its dealings with the Respondent's future work force, the members of which were unduly influenced and persuaded to sign Local 1010 cards in December 2001. The General Counsel submits that the mere existence of this March 20, 2000 previously negotiated agreement impermissibly tainted and interfered with the Respondent's employees' ability to exercise their statutory right to a free choice of their collective-bargaining representative.

In support of her argument that the advance agreement acted as impermissible restraint on the Respondent's employees, the General Counsel called three former and current LaFarge workers, Jimmy Harris, Ricky Wilson, and Alex Garcia, as witnesses.

Harris[28] testified that around October 2001, he was a member of Local 1010 and unemployed, having been laid off from an environmental technology company. Harris stated that he went to the local's hiring hall and inquired of Local 1010's business agent, Don Jones, about job opportunities. According to Harris, Jones provided him with a job application form and fax number for the Respondent and instructed him to send a resume along with the application.

In November 2000, Harris said he was interviewed by the Respondent's plant manager, Steven Marcus. According to Harris, Marcus examined his resume and asked some general questions about his background.[29] Marcus then said that LaFarge would be unionized and that probably the Steel Workers would represent the employees.

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[28] Harris currently works at the Respondent's East Chicago slag facility as a granulator operator.

[29] Harris said his resume indicated that he was or had served as a safety representative for Local 1010.

Harris was hired by the Respondent on about December 3, 2001. After being on the job for about a week or so, Harris said he went to Local 1010's hiring hall to speak to Jones about the current wage scale at the Respondent; Harris was earning $14.50 per hour at the time. Harris said he met with Jones alone in his office and Jones showed him an undated copy of a contract signed by Messina, the Respondent's attorney, and Local 1010's Mike Mezo. Harris said he looked at the wage structure and the benefits provision.[30]

Harris said that he later met with Jones and a representative of the Steel Workers International, Sue Beckman, at the union hall; a number of LaFarge employees were also present.[31] According to Harris, Jones on this occasion showed the group the same undated collective-bargaining agreement signed by Mike Mezo and an attorney for LaFarge (Messina). According to Harris, they were given a copy of the contract.

Harris testified that not long after this meeting, a fellow employee, John Rogers, asked him and about 13 other employees to sign a Local 1010 authorization card in the LaFarge facility break room. Harris said he did not sign the card immediately but later (on December 18) signed the card because he had been affiliated with Local 1010 and trusted the members and because he did not know of any other union at the time;[32] Harris said that he observed other employees signing the cards and returning them to Rogers.

Harris said that on February 7, 2002, he signed a revocation of authorization form revoking Local 1010's right to represent him. He admitted that Tim Utley, a Local 50 organizer, persuaded him to do so.[33] According to Harris, Utley asked him how we had come to sign on with Local 1010 and explained that we (employees) had a right to choose our own representative union. Utley also said that employees at LaFarge could possibly make more money as operating engineers and, as proof, showed Harris copies of contracts that the operating engineers had with other companies. According to Harris, these contracts contained far higher wage levels than the current ones at the Respondent.[34] Harris insisted that Utley said

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[30] Harris identified G. C. Exh. 2 as a copy of what Jones had described to him as a proposed contract between LaFarge and Local 1010, which Jones showed him in the meeting. Harris said he did not know Attorney Messina at the time but knew Mezo as a Local 1010 official. Harris recalled later speaking with LaFarge employees Ricky Wilson, Don Mills, and Jeff Gunther about this contract, advising them that there was no provision for future wage rates and that the benefits had not changed since their hiring at LaFarge. Harris said that he and the other men wondered how the contract had already been written up.

[31] Harris identified employees Don Mills, Ricky Wilson, Joanne James, Alex Garcia, Gill Parell, John Rogers, and Lee Eidler as being in attendance at this meeting. Only Alex Garcia and Ricky Wilson testified at the hearing. Neither Jones nor Beckman testified at the hearing.

[32] Harris' signed Local 1010 card is contained in G. C. Exh. 5; it is dated December 18, 2001. Harris said he knew Jones from a previous job and Harris' father had known Jones for over 20 years; Harris father is a Local 1010 member.

[33] Harris identified G. C. Exh. 6, a copy of his Local 1010 revocation of authorization that he signed on February 7, 2002. It should be noted that Utley testified at the hearing and denied making any promises or inducements of higher wages or benefits to any of the Respondent's employees to get them to sign up with Local 150. I would credit his denials in this regard.

[34] As a note, Harris said he did not receive the Local 1010 contract wage of $15 per hour for his job as granulator operator until mid-January 2002. See R. Exh. 30, a salary change document for Harris indicating his new rate of pay at $15 per hour. This document indicates that the "pay rate increase [was] due to union agreement settlement," and is initialed by Plant Manager Steven Marcus.

that higher wages were possible but not probable if Local 150 were selected to represent LaFarge employees.

Ricky Wilson testified that he is currently a granulator operator at the LaFarge plant, having been hired on December 3, 2001, by Marcus. Wilson stated that he previously had been employed by a company providing security at Ispat and was approached by Marcus about his interest in employment around September 2001. Wilson said that Marcus and a supervisor, John Labery, interviewed him in September and, in the course thereof, Wilson said that he asked Marcus whether the LaFarge operation would be unionized. According to Wilson, Marcus said that he did not know, but then asked if he (Wilson) were a part of Local 1010. Wilson said he told Marcus that he was, to which Marcus responded that this was "good."

Wilson said he was again interviewed by Marcus alone in November 2001. While Marcus was showing him around the plant and explaining the wages he would receive, Wilson said that he again asked if the LaFarge plant would be union. According to Wilson, Marcus said yes—"1010"—but offered no further explanation.

Wilson stated a that fellow employee, John Rogers,[35] asked him and other employees to sign a Local 1010 authorization card around the middle of December 2001. According to Wilson, he asked Rogers what would happen if he did not sign a card and Rogers told him if he did not sign, we would be out of a job. Wilson said that he signed the authorization card.[36]

Wilson said that after speaking with Rogers, he met with Local 1010's Jones after Christmas and Jones asked the 10-12 other LaFarge employees gathered at the hall whether they had all signed the 1010 cards. According to Wilson everyone said he had.

According to Wilson, Jones talked about the contract's provisions on wages and benefits in particular and then asked the group whether there were questions. Wilson said he asked how are we "1010" when no one voted Local 1010 in. According to Wilson, Jones responded, saying that Local 1010 had an agreement set up. Wilson said he made no response to Jones but that Jones said the deal had been struck in 2000 and proceeded to distribute copies of the contract.[37]

Wilson acknowledged that he signed a revocation of Local 1010's right to represent him on February 8, 2002,[38] and was asked by Utley of the Local 150 to sign that Union's authorization card. Wilson said that Utley did not explain why he (Wilson) needed to revoke 1010. However, Wilson said he signed on with the Union on February 7, 2002, because he

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[35] While not totally clear, Rogers evidently acted as a steward for Local 1010 at the LaFarge plant.

[36] See G. C. Exh. 12, a copy of Wilson's signed Local 1010 authorization card dated December 17, 2001. Wilson identified the following LaFarge employees whom he believed signed Local 1010 cards: Jimmy Harris, Jeff Gunther, Alex Garcia, Bernie DeLarossa, Lee Eidler, Terry Williams, and Joanne James.

[37] Wilson identified G. C. Exh. 2 as a copy of the contract Jones spoke about and distributed at this meeting.

[38] See G. C. Exh. 13, a copy of the revocation form Wilson stated that he signed. The form is dated February 6, 2002; Wilson's signature is dated February 8, *2001*. I view this as a mistake on Wilson's part.

thought it was in his best interest to do so after talking with Utley.[39] Wilson stated that he felt that the Local 150 offered more benefits to him than the Steel Workers.

Alex Garcia testified that he worked for the Respondent for about 9 months; he was involuntarily terminated on about September 15, 2002.[40]

Garcia stated that he was interviewed in November 2001 by Marcus for a granulator operator job he had heard about through a newspaper ad.[41] During the interview, according to Garcia, Marcus asked about his experience in the steel industry and stated that he (Marcus) was looking at people who have worked at unionized companies because the Respondent was a union company; Marcus did not identify any specific union.

Garcia said that he was called in for a second interview by Marcus in mid-December 2001, this time at the newly opened LaFarge plant. According to Garcia, Marcus gave him a tour of the plant and ultimately asked him if he were interested in the job. Garcia said that he agreed to work for LaFarge and signed a letter agreement closing the deal. Garcia started working for the Respondent the next day.

Garcia said on his first day of the job he was approached by a fellow employee, Rogers, who gave him a Local 1010 authorization card to sign with instructions to return it to him as soon as possible; Rogers indicated that there was some urgency to having the card signed and returned because there was no union at the plant.

Garcia stated that he was baffled by Rogers' comments because, based on Marcus' statements at the first interview, he believed there already was a union in place at the plant. However, Garcia said that he signed the Local 1010 authorization card on December 19, 2001, but under "pressure" because of the way Rogers represented the matter.[42]

Garcia said that he, along with about 12 LaFarge workers, attended a meeting at the Local 1010 hall. At this meeting, Local 1010 official Don Jones and a lady whose name he could not recall presented the employees with a contract and told them "this was the contract

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[39] See G. C. Exh. 14, a copy of Wilson's Local 150 authorization card. Wilson said that he asked Utley how Local 150 could be better for him. According to Wilson, Utley told him about certain benefits, including retirement, health, and dental and vision. Wilson said that Utley did not say he would receive higher wages than the Steel Workers but that wages would be competitive for the steel industry; Utley did not identify what the specific competitive rate would be. Wilson said he did not know whether Utley distributed sample collective-bargaining agreements that Local 150 had with other companies.

[40] Garcia said that he failed a drug (urine) test administered by the Respondent and was let go. Garcia said that he was taking medication at the time and believes the test results were inaccurate. He testified that he was not under the influence of any impairing substances while testifying. I note that Garcia exhibited no signs of inebriation or intoxication at the hearing.

[41] R. Exh. 27 indicates that Garcia was interviewed by Marcus on November 7, 2001. Marcus verbally offered Garcia a job on December 11, 2001, and Garcia accepted on that day. (See R. Exh. 29.)

[42] See G. C. Exh. 9, a copy of his Local 1010 authorization card. On cross-examination, Garcia stated that he signed the Local 1010 card because he was now working at LaFarge and thought that Local 1010 was supposed to represent the employees there since it (the Steel Workers) represented thousands of employees at Ispat; he thought that it was "natural" for them to represent the employees of the slag operation.

we were going to have with LaFarge." Garcia recalled that the contract was signed and in his view seemed "pretty final" to him,[43] but Garcia conceded that the Local 1010 representatives solicited criticism of the contract from the group.

Garcia testified that he decided to revoke the Local 1010 authorization and did so by executing a revocation letter on February 7, 2002,[44] which was provided to him by Local 150 organizer Tim Utley; Garcia stated he had signed a Local 150 authorization card the day before (February 6) and returned it to Utley.[45]

Garcia said that he spoke once with Utley before revoking Local 1010. According to Garcia, Utley made LaFarge employees aware of Local 150 and touted it, saying that Local 150 would ensure that they received a competitive wage within the steel industry. Garcia insisted that Utley did not say that they would actually receive higher wages by signing on with Local 150 although he (Garcia) understood that these wages would be or were higher than those he was currently receiving at LaFarge; Garcia felt that the benefits would be "better," not higher. Garcia stated that he thought signing on with Local 150 was in his best interest.

The Respondent's Contentions

The Respondent attacks the General Counsel's theory and position by first denying that prospective and later hired employees were interfered with in their choice of collective-bargaining representative when they were interviewed and later hired. The Respondent, as its second principal defense, asserts the general legality of the prenegotiated agreement and the later executed final agreement. The Respondent called Marcus in support of its first line of defense.

Marcus testified that he was responsible for hiring at the Respondent's new slag processing facility and at Ispat. When he, himself, was hired, Marcus said that he did not know which of any unions would represent the hourly employees, none of which had been hired at the time. Marcus stated that he gave no special consideration to union members and had received no instruction from management to give any such consideration to union members.

Marcus stated that the LaFarge slag processing operation formally commenced on January 1, 2002, with an initial complement of 14 workers—2 maintenance employees, 4 loaders, and 8 production workers.[46] The work force was later increased by four workers to

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[43] Garcia was shown a copy of the contract—G. C. Exh. 2—and identified it as the contract he was given and, when directed to p. 15 of the document by the General Counsel, recalled the names of the signatories, Messina and Mezo.

[44] Garcia's revocation is contained in G .C. Exh. 10.

[45] Garcia's Local 150 authorization is contained in G. C. Exh. 11.

[46] Marcus initiated the hiring process at the new facility, including placing ads and notices of job opportunities and developing various interview documents and applicants' ratings sheets as well. Marcus seemingly single handedly initiated and implemented the hiring process at the new facility. He devised job descriptions and placed ads and notices of job opportunities in the local newspapers, state employment agencies, and around the Ispat plant. He also created an applicant interview form (see R. Exh. 24) and procedure (R. Exh. 25); he conducted all interviews of at least two groups of employees (see R. Exhs. 26 and 27) and devised a rating system for those interviewed (see R. Exh. 28). Between November 20 and December 11, 2001, Marcus offered jobs to 15 prospective employees, 14 of which had accepted employment (see R. Exh. 29).

assist in cleaning up a problem involving "cold slag" that could not be processed. Some of the initial hires had previously worked at Ispat.

Regarding interviews he had with job applicants, Marcus admitted that any applicant who asked about union representation at the new plant was told by him that "probably" the employer would be represented by a union but that was not his decision; it was the employees' choice to make. Marcus denied telling any applicants that LaFarge would indeed be a union company or that the Company was looking for applicants who had worked for union companies. He also denied telling them that the LaFarge facility would be represented by Local 1010, or that it was "good" that any applicant had been affiliated (a part of) with Local 1010.

Marcus denied asking any applicants about their union affiliation. Marcus said that he never told any applicants or employees that the Company had already selected Local 1010 as their collective-bargaining representative. In fact, he had never participated in any negotiations with that Union. According to Marcus, he first became aware that Local 1010 represented a majority of the LaFarge work force on January 17, 2002, via a telephone call from Messina, the Company's attorney. Marcus stated that Messina had not previously informed him that LaFarge had negotiated a contract with Local 1010.

Pursuant to its second line of defense, the Respondent argues in essence that it did not officially recognize Local 1010 as the representative of the employees until January 2002 and did not enter into the operative collective-bargaining agreement until February 2002; and that Local 1010 had obtained authorization cards from a majority (9 of 14) of LaFarge's employees in December 2001. The Respondent contends that the parties' resulting contractual arrangement under these circumstances is lawful.

The Respondent also submits that it did nothing unlawful under the Act by negotiating the March 20, 2000 contract with Local 1010 because the agreement was "tentative" and contingent on Local 1010's obtaining majority status. The Respondent also points out that the complaint does not specifically allege that the March 20, 2000 contract is unlawful.[47]

The Respondent further argues that this case, arising as it does out a scenario including a unionized integrated steel plant with an existing collective-bargaining agreement, is distinguishable from the situation of an employer's opening a new ("green field") plant with no union in place and then negotiating with a minority labor organization. In the latter case, the Respondent concedes (evidently) that the agreement would be unlawful.

The Respondent asserts that here, Local 1010 clearly "owned" the slag removal work as well as part of the construction work under the existing contract with Ispat. Moreover, based on the new LaFarge process, steel workers' jobs were anticipated to be lost and that, in fact, 12 to 14 job opportunities were reduced and construction and overtime was lost when the new slag facility went on line. Accordingly, under these circumstances, the Respondent argues that Ispat had to have Local 1010's agreement in order to build and operate the new slag processing facility. Moreover, the Respondent argues that Local 1010, under obligation to protect the interests of its members, had to negotiate the agreement with LaFarge. Economic necessity thus undergirded the parties' decision to negotiate an agreement in March 2000.

[47] The Respondent further argues that any such allegation is both time-barred and substantively without merit.

On balance, the Respondent submits that the "industrial reality of the matter required interdependent agreements between Ispat, Local 1010 and the Respondent within the context of effects bargaining" (Respondent's brief at p. 39), and that the agreements struck did not violate the Section 7 rights of its employees, especially since Local 1010 had to demonstrate its majority status through a card check.

The Respondent also argues that it "stands in the shoes" of a successor to Ispat's slag processing operations because there was no substantial change in the nature and scope of the business—slag removal/processing—performed by Ispat and later the Respondent. Accordingly, under the successorship clause of its contract with Ispat, the Respondent contends that Local 1010 acted lawfully in negotiating and enforcing this provision which essentially requires a new employer to abide by the agreement negotiated between it and Ispat;[48] that Local 1010 could have lawfully insisted that any entity desiring to build and operate slag processing at Blast Furnace No. 7 do so under the terms and conditions of the agreement between the Local and Ispat. Conceding that Local 1010 did not exercise this contractual option, electing instead to pursue a more flexible agreement with LaFarge, the Respondent maintains that its more flexible approach with Local 1010 was no less lawful than the approach the local could have taken under the contract. Said another way, the Respondent asserts that irrespective of whether LaFarge and Local 1010 resorted to the Ispat collective-bargaining agreement or took the approach embodied in the March 20, 2000 tentative agreement, in any case they would have entered into an agreement regarding the terms and conditions of employment for the LaFarge work force but contingent on Local 1010's showing majority status, in the Respondent's view an entirely lawful procedure or process for Local 1010. Along these lines, the Respondent contends that Local 1010 had the discretion to depart from the boilerplate basic agreement where it has determined that more flexible terms and conditions of employment were more appropriate given the extant circumstances; that there should be no violation of the Act where a union reasonably departs from an agreement but does not jeopardize the interests of bargaining unit employees.

The Respondent further submits that whether it ultimately hired a majority of its work force from the ranks of displaced Ispat slag workers is irrelevant to the legality of the advance agreement with Local 1010. The Respondent contends that in any potential successorship context, it is simply impossible to determine whether a majority of the new workers will be comprised of the former employer's workers; there is no way of telling whether the employer's former workers will actually accept employment with the new employer.[49] Therefore, the

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[48] See R. Exh. 1, the collective-bargaining agreement between Ispat and Local 1010 dated August 1, 1999, with a termination date of July 31, 2004. The successorship provisions are set out in Appendix U of the agreement at pp. 216-217.

[49] To the extent the Respondent contends that it is indeed a successor to presumably Ispat in terms of the slag removal operation at the East Chicago facility, and this is not entirely clear from the Respondent's brief, I reject the argument. In *Fall River Dyeing v. NLRB*, 482 U.S. 27 (1987), the Supreme Court held that a new employer is deemed a successor to its predecessor if there is substantial continuity between the two enterprises. The Board and the Courts continue to follow this well-settled test. In *N.K. Parker Transport, Inc.*, 332 NLRB 539 (2000), the Board stated that in making a continuity determination, it looks to whether (1) there has been substantial continuity of business operations; (2) the new employer uses the same plant with the same machinery, equipment, and production methods; and (3) the same or substantially the same employees are used in the same jobs under the same working conditions and supervisors to produce the same product or provide the same service (at 549-551). The totality of circumstances here, as stated hereinbefore, clearly evince no successorship between

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Respondent contends, that the legality of the older agreement's successorship clause or the new advance agreement's terms should not be determined by the composition of the work force at the new facility.[50]

The Respondent also argues that its previously negotiated agreement with Local 1010 is valid based on its interpretation of Board cases dealing with application of contract clauses where the Union has proved its majority status. In such cases, the Respondent maintains that the Board has *implied* (emphasis supplied by the Respondent) that the application of a contract clause is contingent on the Union's attaining majority status and that it is proper for the parties to apply the contract after the union demonstrates is majority status.[51]

Lastly, the Respondent contends that the General Counsel's Advice Memorandum, *General Motors Corp*., Case 7–CB–6582, June 2, 1986 (*Saturn*) supports its advance recognition theory. I do not view this advice memorandum as persuasive nor certainly binding Board authority and decline to give it any significant weight in resolving the matter.[52]

D. The Applicable Legal Principles; Discussion, and Conclusions Regarding the March 20, 2000 Advance Collective-Bargaining Agreement

Section 7 of the Act provides as follows:

Ispat and the Respondent, and I would so find and conclude. Accordingly, the Respondent was not obliged to recognize Local 1010 and negotiate an agreement with that Union. *Premium Foods, Inc*., 260 NLRB 708 (1982), enfd. 709 F.2d 623 (9th Cir. 1983),

[50] The Respondent readily concedes that the majority of its work force at the new slag facility did not come from Ispat.

[51] The Respondent cites the case of *Houston Division of the Kroger Co.*, 219 NLRB 388 (1975), as a leading case in support of its position. I note that this case involved allegations of violations of Sec. 8(a)(5) and is factually inapposite to those of the instant litigation. *Hotel Employees Local 2 v. Marriott Corp.*, 961 F.2d 1464 (9th Cir. 1992), a non-Board case also cited by the Respondent, merely endorsed the *Kroger* holding that national labor policy favors enforcing contract clauses waiving an employer's right to demand an election. These cases, in my view, are not persuasive authority to support the Respondent's point.

[52] The Respondent readily concedes that this advice memorandum does not have the force and effect of a Board decision. I have, nonetheless, considered the Respondent's argument that this memorandum supports its position that the advance recognition here is permissible.

Notably, on June 17, 2003, the Respondent submitted a motion styled Motion for Submission of Supplemental Authority, which requested permission to submit additional legal authority after the submission of briefs deadline. The General Counsel and Charging Party timely responded and submitted their responses opposing the motion. The motion is denied on grounds of timeliness. However, I have considered the proffered supplemental authority, *Super Fresh Food Markets, Inc. v. Food & Commercial workers Local 1776*, F. Supp. 546 (ED PA. 2003), and would conclude essentially on two grounds that it is not persuasive or even apposite authority. First, *Super Fresh* is a Federal District court decision which I am not bound to follow; and, second, legality and factually, this case is distinguishable. On this latter point, I note that *Super Fresh* is a suit by an employer to vacate an arbitration award. The employer, inter alia, argued that the award redounded to violations of Sec. 8(e) and 8(b)(4)(a) of the Act. These are issues and concerns far removed from the instant litigation, and have meaningful bearing on the matter at hand.

> Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and not to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all such activities except to the extent that such right to refrain from any or all such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) [Section 158(a)(3) of this title].

Consistent with these rights which basically give employees a right to choose, the Act makes it an unfair labor practice for an employee "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it . . ."[53]

The instant litigation does not involve domination by the Respondent of any of the labor organizations involved or its interference with any union's administration. Accordingly, my discussion and analysis will address the charges which go to the Respondent's alleged unlawful rendering of assistance and support to Local 1010 and interference with its employees' right to choose their own collective-bargaining representative.

Section 8(a)(2) attempts to reach and reconcile essentially two legitimate but countervailing goals: first, the protection of the employees' freedom of choice; and second, the promotion of cooperation between employers and employees. *Electromation, Inc. v. NLRB*, 35 F.2d 1148 (7th Cir. 1996). In determining whether unlawful assistance has taken place, the Board looks to the totality of the circumstances to determine whether the employer's conduct tainted the Union's majority status. The totality of the circumstances consists of post-recognition and prerecognition conduct of an employer viewed in the context of the entire case and, moreover, where an employer's numerous acts may be construed as a single course of conduct. *Mar-Jam Supply Co.*, 337 NLRB No. 46 (2001).

As a general proposition, it is clear to the point of legal axiom that the Board will find a violation of Section 8(a)(2) in almost per se fashion where an employer recognizes a labor organization which does not actually have majority employee support. *Ladies Garment Workers (Bernard-Altman Texas Corp.) v. NLRB*, 366 U.S. 731 (1961). In accord, the Board in *Grocery Haulers, Inc.*, 315 NLRB 1312 (1995), affirmed the administrative law judge's decision. There, the judge stated:

> The Board's established test for determining whether recognition has been lawfully extended is twofold. At the time of recognition, an employer (a) must employ a substantial and representative complement of its project work force, and (2) the employer must be engaged in its normal business operations. [Citation omitted.] (At 1316.)[54]

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[53] The remaining language of Sec. 8(a)(2) is as follows:

> Provided that subject to rules and regulations made and published by the Board pursuant to Sec. 6, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay. 29 U.S.C. § 158(a)(2).

This part of Sec. 8(a)(2) has no relevance to this litigation.

[54] In *Grocery Haulers*, supra, the judge concluded that the recognition was unlawful under Sec. 8(a)(1) and (2) of the Act and that the execution of the collective-bargaining agreement was also unlawful because it flowed from the unlawful recognition. The judge in similar vein concluded that since the collective-bargaining agreement contained union-security and dues-

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In *AMA Leasing*, 283 NLRB 1017 (1987), where the employer recognized the union on August 7 and entered into a collective-bargaining agreement on August 15 but did not begin its normal operations until September 17, the Board affirmed the judge who determined that the recognition and the agreement were unlawful under those circumstances.

Here, it is uncontroverted that the Respondent negotiated in advance a collective-bargaining agreement with Local 1010 in March 2000. It is equally clear this agreement was executed long before the Respondent began its operations and even hired the first employee. On these facts alone, it would appear that this agreement falls squarely within the type of agreements the Board would proscribe. The Respondent principally (and essentially) argues that this agreement was not and could not be effective until such time as Local 1010 demonstrated by a verified card check that it had majority status, which was achieved in late December 2001, at which time the new slag plant had hired a substantial complement of workers and the plant was for all practical purposes operational. The Respondent thus asserts that the actual recognition of Local 1010 and the execution of the collective-bargaining agreement did not take place until January 25, 2002.[55] On this theory, the Respondent contends that its actions were lawful.

The Respondent's principal defense is faulty on at least two counts. First, the March 2000 contact does not, by its terms (or by reference), indicate that the Respondent's recognition of Local 1010 is subject to it achieving majority status. Therefore, an actual employee or job applicant would and on a practical level could not know this contingency. To be sure, any reasonable employee or applicant for employment would think that the deal was cut, was done—that Local 1010 was their collective-bargaining representative. In point of fact, this conclusion is inescapable because the contract by its literal terms in—Article XVIII—indicates that the agreement is the complete agreement between the parties and that any agreements to the contrary had to be in writing. Therefore, an employee giving a common sense reading to the agreement could reasonably conclude that his collective-bargaining representative was Local 1010 and that no other conditions existed to alter that fact.

The three employee witnesses, Garcia, Harris, and Wilson, give especial credence to this point. Notably, each was shown the March 20, 2000 agreement by Local 1010 representatives and each eventually signed Local 1010 authorization cards as a consequence. I believe, under the circumstances, including (1) the general prominence of the Steel Workers at Ispat, (2) their not being told that the agreement was contingent on Local 1010's having majority status, (3) the fact that they were new hires at the Respondent's operation, (4) the contract's clear statement that Local 1010 was the collective-bargaining representative, and (5) that both the Respondent and Local 1010 were signatories to the contract, that the applicants and

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checkoff provisions which were enforced by the employer, that the employer also violated Sec. 8(a)(1) and (3) of the Act. (At 1317.)

[55] It should be noted that I have examined both the March 20, 2000 agreement and the January 25, 2002 agreement, and they are practically identical. This fact is attested to by the Respondent's Senior Director of Industrial Relations, Dennis Roese, who testified at the hearing. Roese, who participated in the contract negotiations, stated that aside from a wage structure and a procedure for reimbursement for insurance which had not been finalized as of January 2002, the contracts are identical; that there was no substantial difference between the two. Roese testified and forthrightly in my view. He appeared to be an honest historian of the negotiations process and impressed me with his candor. I would credit his testimony on this point.

employees like Garcia, Harris, and Wilson were denied their right to choose their own representative or at the least this right was interfered with by dint of the agreement.[56] This brings me to the other point where the Respondent's defense fails.

As previously noted, the Act generally prohibits an employer from contributing substantial support or assistance to a labor organization which has the effect of inhibiting self-organization and free collective bargaining.[57] While the Respondent argues that its advance agreement, coupled with the majority status contingency, was of no legal efficacy, in my view it nonetheless was utilized by Local 1010 to acquire signatures from the Respondent's employees. In this regard, the three employee witnesses each testified that the Local 1010 representatives provided copies of the March 20 agreement to them.[58] The inescapable purpose of showing them the contract, in my view, was to convince them that a deal had already been struck by Local 1010 and the Respondent. I see this as the type of contribution of support by an employer to a labor organization that the Act prohibits. The mere existence and presentation of this facially executed and valid agreement between Local 1010 and the Respondent could, in my view, reasonably could be said to interfere with an employee's right to choose his own collective-bargaining representative.

Therefore, based on the foregoing, I would find and conclude that the March 20, 2000 collective-bargaining agreement negotiated in advance by the Respondent and Local 1010 unlawfully tainted the Respondent's recognition of, bargaining with, and entering into an identical contract with Local 1010 in January 2002 when Local 1010 did not, in fact, represent an uncoerced majority of the Respondent's employees.[59]

Accordingly, I would find and conclude that the Respondent violated Section 8(a)(2) and (1) of the Act by recognizing, negotiating, and bargaining with Local 1010 and by entering into the March 2000 and January 2002 agreements.

E. The Remaining 8(a)(2) Allegations

In addition to the charge of unlawful recognition of, negotiating, bargaining, and contracting with Local 1010, the Respondent is also charged with unlawfully assisting Local 1010 by its telling employees, actually applicants for hire, that the Company had already selected their collective-bargaining representative, namely Local 1010, on two dates in November 2001;[60] by telling an applicant for hire that the LaFarge facility was union in

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[56] I acknowledge that neither the Respondent nor the Local 1010 representatives forced employees to sign the authorization cards. Certainly, each of the testifying witnesses for the General Counsel had their own reasons. Nonetheless, under the circumstances present here, their choice of Local 1010 was tainted, impermissibly so.

[57] *Windsor Place Corp.*, 276 NLRB 445 (1985). But see *NLRB v. San Antonio Portland Cement*, 611 F.2d 1148 (5th Cir. 1980), cert. denied 449 U.S. 844 (1980), mere statements of supervisor favoring a union under totality of circumstances not coercive.

[58] I should note that I found witnesses Garcia, Wilson, and Harris to be highly credible witnesses. Each man testified forthrightly and without embellishment. Their testimony was consistent and corroborated by other evidence of record in this case.

[59] In this regard, I view the two agreements as a single course of illegal conduct by the Respondent. Accordingly, the charges, as they relate to the March 2000 agreement, are not time-barred.

[60] These charges also allege violations of Sec. 8(a)(1) in that the claimed conduct interfered with the employees' right to a free choice of their collective-bargaining representative. These

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December 2001; by its agents threatening employees with discharge if they did not sign Local 1010 dues-checkoff authorization cards on about May 9, 2002; and by its agents on May 6, 7, and 8, distributing Local 1010 dues-checkoff authorization cards to its employees and instructing employees to return them to the Company by a certain date.

1. The November and early December 2001 Marcus interviews

As I have previously discussed herein, employees Harris, Wilson, and Garcia were interviewed by Plant Manager Marcus in late November and December 2001, respectively, prior to being hired by the Respondent. The charges here relate to statements the three said that Marcus made to them during the course of their individual interviews. To recapitulate: Harris testified that Marcus told him at his November interview that LaFarge would be a union company and that the Steel Workers would probably represent the employees. Wilson testified that he asked Marcus whether LaFarge would be union and Marcus initially said he did not know, but then Marcus asked him if were affiliated with 1010 and later said "good" when Wilson said he was. Wilson stated that at his second interview, Marcus, responding to his query, said that LaFarge was going to be union—Local 1010. Garcia testified that Marcus, in mid-November at his first interview,[61] said he was looking at applicants who have worked with union companies because LaFarge was a union company.

Marcus, as noted, generally denied making the comments attributed to him, only conceding that if an applicant asked about whether employees would be represented by a union or would be union, he would say probably but that the decision would be left to the employees.

The threshold question, of course, is whether Marcus made the statements in question. As I have indicated, I found Harris, Wilson, and Garcia to be highly credible witnesses. Harris and Wilson are current employees and I have considered this fact in my assessment of their credibility. However, they were both otherwise credible, each delivering his testimony without hesitation or acrimony. Significantly, their testimony was consistent and in a sense each was corroborated by the other.

Garcia was let go by the Respondent and could be said to have a motive to fabricate or be otherwise biased against the Respondent. However, in spite of his termination with which he clearly disagreed, he testified with confidence and demonstrated no animosity toward the Respondent. Then, too, his testimony is consistent with that of the other applicants, all of whom were interviewed at around the same time by Marcus.

In a sense then, Marcus' denials were simply outweighed by the testimony of three credible people whom he personally interviewed for employment and eventually hired. But I note that to me Marcus' denial of any knowledge of the previously negotiated March 20, 2000 collective-bargaining agreement between Local 1010 and LaFarge, or that LaFarge had recognized Local 1010, did not ring true. Marcus testified that during the hiring process there was great pressure to get the plant up and running and that he worked about 70 hours per week toward that end. Clearly, as he testified, hiring was not Marcus' only focus but having *no hiring (or labor) problems* was certainly part of his and management's focus. This is why the collective-bargaining agreement was negotiated in advance—to obviate labor issues. So it

8(a)(1) violations will be discussed in a separate section.

[61] Garcia was interviewed a second time by Marcus in mid-December and was offered a job then, but the topic of unions was not discussed then. I would find and conclude that there is a nonfatal variance with the charge and the evidence regarding this aspect of the case.

seems likely to me that Marcus knew in advance when he was hiring that the Company was going to be union and that the likely union representative would be Local 1010. I believe that he, as the three applicants testified, made the statements in question.

The next inquiry, of course, is whether these statements in context could, under the circumstances, reasonably be construed to be unlawful support of Local 1010. I would conclude that they do constitute unlawful support. It should be noted that these statements to me were part of a whole, a mosaic of sorts, each piece of which was designed to meet the Respondent's objective to get the plant on line free of labor difficulties. It is clear from the record that the Respondent determined that securing the slag business at Ispat would or could be financially rewarding but would require (1) a substantial ($35 to $50 million) investment that needed vouchsafing, (2) an agreement with Ispat to take over the slag removal functions, and (3) most importantly, no specific problems with the Steel Workers regarding the slag removal operation, either in construction or operation. Granted part of this design was frustrated because Local 1010 members were not given the promised preferential hiring, but this glitch seemingly was later rectified at the Local 1010 union hall after employees were hired. Be that as it may, the Respondent, through Marcus, as I view this case, in a subtle way attempted to guarantee no labor problems for the Company by advising the applicants in the interviews that the Company would first be a union company and, second, specifically that union would be Local 1010. In this fashion, Marcus, depending on the answers he received, would know whether the employees posed a possible labor problem. It would appear that Harris, Wilson, Garcia, and the others hired by Marcus passed muster. Notably, each man and the others, very soon after hire, signed Local 1010 authorization cards. Thus, like the advance agreement the Respondent negotiated with Local 1010 in March 2000, Marcus' statements to the would-be employees for the new plant were simply part of or served the Respondent' s overall plan to secure labor peace through means of assisting Local 1010 to get majority status.

I would find and conclude that the Respondent violated Section 8(a)(2) with respect to the statements in question.

2. The May 9, 2002 discharge threats

The complaint alleges that Plant Supervisor Jay Smith threatened employees with discharge on May 9 if they did not sign Local 1010 dues-checkoff forms.

Wilson testified that on about May 7, a Wednesday, he was approached by Jay Smith, who at the time was distributing Local 1010 dues-authorization cards. According to Wilson, Smith said that the signed card was due that Friday, May 10. Wilson said he did not sign the proffered card at that time.[62]

On that Friday, Wilson said he spoke with Smith in his office.[63] Smith asked if he had signed the card. Wilson said that he had not. According to Wilson, Smith then asked if he had attended a Local 1010 meeting; Wilson said he had not. Smith then said that he (Wilson) should do so to better his family. Wilson said he told Smith that he was not interested in Local 1010. According to Wilson, Smith said if he did not sign the checkoff card, he could lose his job, could be fired; and then went on to say that (not signing) would be like quitting his job.

[62] Wilson identified G. C. 8 as the type of card Smith asked him to sign.

[63] According to Wilson, Jeff Gunther, an employee operator, was present. Gunther did not testify at the hearing. Gunther also signed a Local 1010 revocation of authorization form on February 8, 2002.

Smith testified that he began his employment at the LaFarge slag facility on January 20, 2002, as a granulator operator bargaining unit position; he was promoted to supervisor on April 25, 2002.[64] Smith stated that he was asked by fellow Supervisor Paul Kinsler (who was acting on Marcus' instructions) to distribute dues-authorization cards and recalled a conversation with Wilson about the cards. According to Smith, he gave a card to Wilson but Wilson said he was not going to sign it. Smith said that he told Wilson, "Well, you have to do whatever your have to do, I am just passing them out, doing my job."

Smith, noting that the cards were to be returned a couple of days later on Friday, said he spoke to Wilson about the cards. According to Smith, Wilson asked him if he (Wilson) could get fired for not signing the card. Smith said that he told Wilson that he did not think so, that not signing would be like refusing to be a member in good standing with the Union—it would be the same as quitting this job.[65] Smith said however, he told Wilson that he did not really know and was not sure in answer to Wilson's query.

Smith denied that he or any other supervisor threatened any employee with discharge for refusing to sign the card; nor was any other discipline threatened. In fact, Smith said he never followed up with any other employees he had asked to sign although two of the four to five people he solicited returned signed cards.

Here, again, credibility looms large in resolving the charge. That is, if Smith threatened Wilson with discharge for not signing the dues checkoff for an unlawfully recognized union pursuant to an unlawful contract, then the violation would be made out. I have previously credited Wilson's testimony, and there is no reason not to credit the sincerity of what he understood Smith to be saying, and that what he thought Smith said could be construed by him to be a threat of discharge if he did not sign the dues-checkoff form. However, Smith's explication of his admitted encounter with Wilson was not unbelievable. Smith, by his demeanor, seemed to me equally sincere in trying to explain what not signing the dues-authorization meant to him. In this encounter, Wilson's testimony is not corroborated and clearly he refused to sign with no consequence. The alleged threat was not acted on. In fact, Smith, before his promotion, had signed a Local 150 authorization card, revoking his Local 1010 authorization.[66] Therefore, he, at least on this criterion, was not a supporter of Local 1010. On bottom, considering the circumstances and the equally credible evidence adduced by the parties' witnesses, I cannot find that Smith threatened Wilson with discharge for not signing the Local 1010 dues-checkoff. Accordingly, I would dismiss this aspect of the complaint.[67]

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[64] The complaint alleges that Smith is an agent and/or supervisor of the Respondent within the meaning of Sec. 2(11) and 2(13) of the Act. The Respondent in its answer admitted that Smith was a plant supervisor but denied that Smith was a supervisor under the Act. Based on Smith's admission of his supervisory status and Wilson's testimony, I would find and conclude that, for purposes of the Act, Smith is a supervisor and/or agent of the Respondent.

[65] Smith based this opinion on his experience at another unionized shop. Smith explained that he understood in order to be a member in good standing, one has to pay dues which was accomplished through an authorization card.

[66] See G. C. Exh. 15, a copy of Smith's Local 1010 revocation of authorization card signed by him on February 8, 2002.

[67] So the record is clear, I have found that the General Counsel failed to meet its burden of proof, that the evidence testimony on this point is in equipoise on credibility grounds. Accordingly, on sufficiency of evidence grounds, I have recommended dismissal of this charge.

3. The distribution of Local 1010 dues-checkoff authorizations and instructions to return them

a. The May 6 and 7 distribution by Smith

As previously discussed, Smith admitted that he was enlisted by a fellow supervisor to distribute the Local 1010 dues-authorization cards to the Respondent's employees on about May 6 or 7 and that he told the workers that the cards were to be returned by no later than Friday. The employees Smith solicited included Wilson and Harris.

Harris testified that Smith asked him to sign a Local 1010 dues-authorization card in early May while he was operating the granulator machine. According to Harris, Smith said that Marcus wanted him to sign the cards and we (meaning Local 150 supporters) had lost the hearing at the Board, we might as well sign them. Smith said that Marcus wanted the signed cards returned by Friday. Harris said he did not sign the card but felt that Smith's overtures to sign carried an implied threat of discipline.[68]

b. The May 8 distribution by Paul Kinsler

Garcia testified that a supervisor at the LaFarge plant, Paul Kinsler, approached him in his work area in May 2002 on a Wednesday and asked him to sign a Local 1010 dues-authorization card; Garcia said he and Kinsler were alone at the time. According to Garcia, Kinsler said that the card was to be signed and returned by the following Friday.[69] Garcia stated that he did not sign the card.[70]

Kinsler[71] testified that he was asked to distribute Local 1010 dues-checkoff authorization cards around May 6, a Wednesday, by management. Kinsler stated that he spoke with Garcia about the cards near Runner No. 2 (Garcia was working in the pulpit area) and gave him a card. According to Kinsler, he told Garcia if he wanted to sign it, sign it; that Garcia put the card in his lunch box. Kinsler said that he went about his rounds after telling Garcia that Marcus would like to have the cards back on Friday if at all possible.

Kinsler said that he never followed up with Garcia on the matter, and Garcia was never disciplined or threatened with discipline for not signing the card.

Kinsler acknowledged that he spoke to other employees, including Mike Hardin and Utley, about the dues-authorization card. Hardin, with whom Kinsler had worked previously for about 10 years, in a joking way took the card and said he may as well wipe [himself] with it.

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[68] Harris identified G. C. Exh. 8 as a copy of the type of dues-authorization form Smith presented to him. Harris said that no one from management ever actually threatened him, least of all Smith, whom Harris believed did not know what the dues form was about and seemed only to be acting on Marcus' instructions.

[69] Garcia also identified G. C. Exh. 8 as a copy of the authorization card that was presented to him by Kinsler.

[70] Garcia also noted that around February 2002, Kinsler told him he did not know why he wanted to get involved with Local 150 because that Union only wanted to use the workers as pawns to get involved in all of LaFarge's corporations.

[71] Kinsler admitted that he was a supervisor at the facility. The Respondent in its answer admitted that Kinsler was a "Plant Supervisor." I would find and conclude that Kinsler was a supervisor/agent at the LaFarge facility during all materials times within the meaning of the Act.

According to Kinsler, Hardin never signed the card but was never disciplined or threatened with discipline. Kinsler said that Utley also took the proffered Local 1010 card, ripped it up, and laughed. Utley was not threatened with discipline nor actually disciplined for not signing.[72]

c. Discussion of the dues-checkoff allegations

The March 20, 2000 advance contract and the January 25, 2002 contract each contained the following identical language (in pertinent part):

> Article IV
> Union Membership and Checkoff
>
> Section 1. Each employee who, on the effective date of this provision, is a member of the Union and each employee who becomes a member after that date, shall as a condition of employment, maintain membership in the Union to the extent of tendering the uniform initiation fee (if any) and periodic dues. Each employee who is not a member of the Union on the effective date of this provision and each employee who is hired thereafter shall, as a condition of employment, beginning on the 30th day following the beginning of such employment or the effective date of this provision, whichever is later, acquire and maintain membership in the Union to the extent of tendering the uniform initiation fee (if any) and periodic dues.
>
> Section 2. The Company will check off each month dues assessments and initiation fees each as designated by the International Secretary-Treasurer of the Union, as membership dues in the Union, on the basis of individually signed voluntary check-off authorization cards, and promptly remit same to the International Secretary-Treasurer.

I have previously found the March 20, 2000 advance agreement unlawful under Section 8(a)(2) and, by extension, the January 25, 2002 contract is likewise unlawful. Therefore, a fortiori, I would find and conclude that the Respondent through its supervisors, Smith and Kinsler (and Marcus), by distributing to the Respondent's employees the dues-checkoff authorizations pursuant to the above-stated contract provisions on behalf of Local 1010 and instructing its employees sign and return the cards to the Respondent, unlawfully rendered assistance and support to Local 1010 in violation of Section 8(a)(2) and (1) of the Act.

F. The Alleged 8(a)(1) Violations Related to the November and December 2001 Interview by Marcus

As noted earlier, the complaint charges that several of the previously discussed 8(a)(2) allegations also constitute violations of Section 8(a)(1) of the Act. I have found and concluded that the Respondent, through a supervisor, violated Section 8(a)(2) by telling Harris that LaFarge would be a union company and that the Steel Workers would probably represent its employees; by asking Wilson whether he was affiliated with Local 1010 and responding that that was good; by telling Wilson that the Respondent's facility would be union, that is Local 1010; and by telling Garcia that the Respondent was looking for applicants who had worked with unionized companies because the LaFarge was a union company. I would find and conclude

[72] Kinsler stated that at the time (May 2002) he solicited the dues-authorization cards, there were about 22 workers in the bargaining unit. Kinsler identified other employees to whom he distributed cards as Jeff Gunther, Lee Idler, Mark Hunter, and Richard Meachy. According to Kinsler, Hunter and Meachy signed and returned the cards; the others did not.

that these statements, given the totality of circumstances hereinbefore set out, also pose violations of Section 8(a)(1) because of their coercive content and interference with employees' rights under Section 7. I note in passing that Section 7 of the Act gives workers the right to choose or not choose a labor organization to represent them. Marcus' statements clearly evinced support for Local 1010 and were unlawful in that regard. In my view, his statements also could strongly convey to job applicants like Harris, Garcia, and Wilson, that if they were not generally a union supporter, let alone a Local 1010 supporter, then the Respondent might not hire them. These statements clearly could reasonably be construed to interfere with the Respondent's employees' free exercise of rights guaranteed them under the Act. *Gissel Packing Co.*, 395 U.S. 575 (1969); *F. W. Woolworth Co.*, 310 NLRB 1197 (1993); *Williamhouse of California, Inc.*, 317 NLRB 699 (1995).

G. The 8(a)(3) Violations

The complaint alleges that the Respondent violated Section 8(a)(3) of the Act essentially by entering into the March 2000 and January 2002 agreements containing the aforementioned union membership and (dues) checkoff (union-security) provisions with Local 1010 when, in fact, Local 1010 was not the lawfully recognized exclusive bargaining representative of the pertinent unit of employees, in order to encourage its employees to join or support Local 1010.

Having found that the Respondent has violated Section 8(a)(2) and (1) by recognizing Local 1010 and executing collective-bargaining agreement(s) with that labor organization when Local 1010 did not represent an uncoerced majority of support among its employees, I would also find and conclude that the Respondent has violated Section 8(a)(3) and (1) by executing (and implementing) said agreements containing the union-security provisions previously discussed in this decision in order to encourage its employees to join or support Local 1010. *Grocery Haulers, Inc.*, 315 NLRB 1312 (1995).

Conclusions of Law

1. The Respondent, LaFarge North America, Incorporated, is now and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The International Union of Operating Engineers, Local 150, AFL–CIO, CLC (Local 150) and United Steel Workers of America, Local 1010, AFL–CIO, CLC (Local 1010) are labor organizations within the meaning of Section 2(5) of the Act.

3. By recognizing and bargaining with Local 1010 as the exclusive collective-bargaining representative of its employees at its East Chicago, Indiana facility at a time when Local 1010 did not represent an uncoerced majority of its employees, the Respondent violated Section 8(a)(2) and (1) of the Act.

4. By negotiating and executing a collective-bargaining agreement with Local 1010 at a time that the labor organization did not represent an uncoerced majority of its employees, the Respondent violated Section 8(a)(2) and (1) of the Act.

5. By telling applicants for hire at its facility and its employees that it had already selected its collective-bargaining representative, to wit, Local 1010; by telling applicants for hire and its employees that its facility was or would be unionized; and by telling applicants for hire and its employees that the facility would probably be presented by the Steel Workers (Local 1010), the Respondent violated Section 8(a)(2) and (1) of the Act.

6. By distributing to its employees dues-authorization cards on behalf of Local 1010 and instructing them to sign and return them to it at a time when Local 1010 did not represent an uncoerced majority of its employees, the Respondent violated Section 8(a)(2) and (1) of the Act.

7. By maintaining and enforcing a collective-bargaining agreement with Local 1010 containing a union-security clause and dies-checkoff provisions at a time when Local 1010 did not represent an uncoerced majority of the Respondent's employees, the Respondent violated Section 8(a)(3) and (1) of the Act.

8. By telling applicants for hire at its facility and employees that it was or would be unionized and that the Steel Workers (Local 1010) would probably represent its employees, the Respondent violated Section 8(a)(1) of the Act.

9. By asking applicants for hire at its facility and employees about their union affiliation and indicating that belonging to Local 1010 was good, the Respondent violated Section 8(a)(1) of the Act.

10. By telling applicants for hire at its facility and employees that it was looking for applicants who had worked at unionized companies because it was a union company, the Respondent violated Section 8(a)(1) of the Act.

11. The Respondent has not violated the Act in any other manner or respect.

12. The unfair labor practices found above constitute unfair labor practices affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Having found that the Respondent has violated Section 8(a)(1), (2), and (3) of the Act, I recommend that it be required to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

I shall also recommend that an appropriate notice be posted.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[73]

ORDER

The Respondent, LaFarge North America, Inc., East Chicago, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Rendering support and assistance to Local 1010 of the Steel Workers, or any successors thereto, by recognizing and bargaining with Local 1010 as the exclusive collective-bargaining representative of its employees at its East Chicago, Indiana facility, unless and until

[73] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Local 1010 is certified by the National Labor Relations Board as the exclusive representative of an appropriate unit of the Respondent's employees.

(b) Rendering support and assistance to Local 1010, or any successors thereto, by maintaining or giving any force or effect to its collective-bargaining agreement with Local 1010 and to any modifications, extensions, supplements, or renewals thereof; or to any Local 1010 deduction authorizations that have been executed by its employees; or to any other contract, agreement, or understanding entered into with Local 1010, or any successor thereto, covering its employees with respect to rates of pay, wages, hours of employment, or other terms and conditions of employment; provided however, that nothing in this Order shall be construed to require the Respondent to vary or abandon any wage increase or other benefits, terms, and conditions of employment that it has established in performance of the agreement.

(c) Rendering support and assistance to Local 1010, or any successors thereto, by deducting union fees, dues, assessments, and other moneys from the wages of its employees on behalf of Local 1010, and remitting the union fees, dues, assessments, and other moneys to Local 1010, unless and until Local 1010 is certified by the National Labor Relations Board as the exclusive bargaining representative of the Respondent's employees, and the employees thereafter execute uncoerced authorizations for the deduction of the union fees, dues, assessments, and other moneys from their wages pursuant to a valid collective-bargaining agreement.

(d) Rendering assistance and support to Local 1010 by distributing to and soliciting its employees to execute and return to it Local 1010 signed membership and dues-checkoff cards.

(e) Rendering support and assistance to Local 1010 by telling applicants for hire and/or employees at its East Chicago, Indiana facility that it has already selected Local 1010 as its employees' collective-bargaining representative, unless and until Local 1010 is certified by the National Labor Relations Board as the exclusive bargaining representative of the Respondent's employees.

(f) Rendering support and assistance to Local 1010 by telling applicants for hire and its employees at its East Chicago, Indiana facility that said facility was or would be unionized and probably would be represented by Local 1010, unless and until Local 1010 is certified by the National Labor Relations Board as the exclusive bargaining representative of the Respondent's employees.

(g) Telling applicants for hire and/or employees at its East Chicago, Indiana facility that it was or would be unionized, unless and until a union representing an appropriate unit of employees has been certified as the exclusive bargaining representative by the National Labor Relations Board.

(h) Asking applicants for hire and/or employees at its East Chicago, Indiana facility about their union affiliation and indicating that belonging to Local 1010 was good.

(i) Telling applicants for hire and/or employees at its East Chicago, Indiana facility that it was looking for applicants who had worked at unionized companies because it was a union company.

(j) In any other manner interfering with, restraining, or coercing our employees in the exercise of the rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay that may be due under the terms of this Order.

(b) Within 14 days after service by the Region, post at its facility in East Chicago, Indiana, copies of the attached notice marked "Appendix."[74] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since February 8, 2002.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. August 6, 2003

_____
Earl E. Shamwell Jr.
Administrative Law Judge

[74] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT render support and assistance to the United Steel Workers of America, Local 1010, AFL–CIO, CLC (Steel Workers) or any other labor organization, by recognizing, bargaining, and negotiating with the Steel Workers or any other labor organization, unless and until the Steel Workers or any other labor organization is certified by the National Labor Relations Board as the exclusive representative of an appropriate unit of our employees.

WE WILL NOT render support and assistance to the Steel Workers or any other labor organization by entering into, executing, maintaining, or giving force or effect to any collective-bargaining agreement with the Steelworkers or any other labor organization, and to any modifications, extensions, supplements, or renewals thereof, unless and until the Steel Workers or any other labor organization is certified by the National Labor Relations Board as the exclusive bargaining representative of the our employees.

WE WILL NOT render support and assistance to the Steel Workers by maintaining or giving any force or effect to any Steel Workers' deduction authorizations that have been executed by our employees, or any other contract, agreement, or understanding entered into with the Steel Workers, or any successor to it, covering our employees with respect to rates of pay, wages, hours of employment, or other terms and conditions of employment; *provided however*, WE WILL NOT vary or abandon any wage increase or other benefits, terms, and conditions of employment that have been established in performance of any agreement we have with the Steel Workers.

WE WILL NOT render support and assistance to the Steel Workers or any other labor organization by deducting union fees, dues, assessments, and other moneys from the wages of our employees on behalf of the Steel Workers or any other labor organization, and remitting the union fees, dues, assessments, and other moneys to the Steel Workers or any other labor organization, unless and until the Steel Workers or any other labor organization is certified by the National Labor Relations Board as the exclusive bargaining representative of our employees, and our employees thereafter execute uncoerced authorizations for the deduction of the union fees, dues, assessments, and other moneys from their wages pursuant to a valid collective-bargaining agreement.

WE WILL NOT render assistance and support to the Steel Workers by distributing to and soliciting our employees to execute and return to us signed membership and dues-checkoff cards.

WE WILL NOT render support and assistance to the Steel Workers by telling applicants for hire or employees at our East Chicago, Indiana facility that we have already selected the Steel Workers as our employees' collective-bargaining representative, unless and until the Steel Workers is certified by the National Labor Relations Board as the exclusive bargaining representative of our employees.

WE WILL NOT render support and assistance to the Steel Workers by telling applicants for hire and employees at our East Chicago, Indiana facility that our facility was or would be unionized and our employees probably would be represented by the Steel Workers, unless and until the Steel Workers is certified by the National Labor Relations Board as the exclusive bargaining representative of our employees.

WE WILL NOT interfere with our employees' right to choose or not their own collective-bargaining representative at our East Chicago, Indiana facility by telling applicants for hire or employees at our East Chicago, Indiana facility that our facility was or would be unionized, unless and until a labor organization representing an appropriate unit of our employees has been certified as the exclusive bargaining representative by the National Labor Relations Board.

WE WILL NOT ask applicants for hire and employees at our East Chicago, Indiana facility about their union affiliation, nor will we indicate that belonging to the Steel Workers is "good" to discourage support for any other labor organization.

WE WILL NOT tell applicants for hire and employees at our East Chicago, Indiana facility that we are looking for applicants who have worked at unionized companies because we are a union company.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed by Section 7 of the Act.

LAFARGE NORTH AMERICA, INC.

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

200 West Adams Street, Suite 800, Chicago, IL 60606-5208

(312) 353-7570, Hours: 8:30 a.m. to 5 p.m.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (312) 353-7170.